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Supreme Court of the United States

OCTOBER TERM, 1958

No. 91

RAY CASH, PETITIONER

vs.

R. O. CULVER, STATE PRISON CUSTODIAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petition for Certiorari
Filed January 11, 1958
Certiorari granted June 9, 1958

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1 IN THE FLORIDA SUPREME COURT

AT TALLAHASSEE, FLORIDA

RAY CASH, *Petitioner*

v.

R. O. CULVER, as State Prison Custodian, *Respondent*

Petition for Writ of Habeas Corpus

Comes now the petitioner, Ray Cash, in his own proper person without counsel, and respectfully represents unto the court as follows:

That he is a pauper, totally unable to pay costs or fees in connection with this application, and therefore prays the Court for leave to proceed in forma pauperis.

That he is and has been restrained and detained of his liberty without authority of law and he presents this petition under and by virtue of section 451 Title 28 U.S.C.A.

That petitioner is imprisoned and detained upon a judgment of conviction found against him without due process of law and entered against him without regard to his Federal rights under the 14th Amendment to the Constitution of the United States, specifically as follows:

-1- The trial court deprived him of his rights to retain counsel for his defense.

-2- The trial court deprived him of his rights to representation by counsel.

-3- The trial court deprived him of a fair and impartial trial.

-4- The trial court deprived him of Due Process of law.

-5- The trial court deprived him of his Constitutional rights under both State and Federal Constitutions.

2 HISTORY OF THE CASE

Petitioner shows he was informed against by the Honorable Ted Duncan, States Attorney for the Eighth Judicial

Circuit of Florida, and was tried on an information charging Breaking and Entering with intent to commit a felony, before Honorable George L. Patton, in the Circuit Court in and for Alachua County, Gainesville, Florida, on December 6, 1954, the trial resulted in a hung jury and immediately thereafter petitioner was removed from the Alachua County jail and taken to the Florida State Prison and placed in solitary confinement in what is known as the Flat Top, and remained in solitary confinement in the State Prison at Raiford, Florida, until February 20, 1955. On February 20, 1955, petitioner was removed from the State Prison back to the County jail in Alachua County, Florida, the next morning, February 21, 1955, petitioner was taken to Court and informed he was to stand trial again on the information for breaking and entering of which the jury could not agree on a verdict.

Petitioner informed Honorable George L. Patton that he had been informed on Thursday February 17, 1955, by one of the Prison Officials at Raiford, Florida, that his attorney Honorable Henry Carr, of Miami, Florida, had withdrawn as his attorney, and ask the Court if Mr. Carr had filed a motion to withdraw as his attorney. Judge Patton informed petitioner he had granted Mr. Carr's motion to withdraw as defense counsel.

Thereupon, petitioner filed a motion for a continuance on the ground that he needed time to enable him to employ new counsel. And that petitioner had not been advised by his chosen counsel Mr. Carr, or the court that trial was to be on February 21, 1955.

The States Attorney, Honorable Ted Duncan, objected to granting the motion and stated, Quote, "Cash was advised a week ago that Carr intended to withdraw."

"Duncan said he talked with Cash's Mother last week and she told him she was going to get a lawyer that day."

"Mrs. Cash, a graying heavy set woman, told the Sun today she was unable to get an Attorney because none would accept the case for the amount of money she was able to offer them. She said she spoke to a number of lawyers but they all refused because of the

fee and also on the grounds that there was too little time to prepare a defense."

The above quote was taken from the Gainesville Sun

The petitioner shows Judge Patton denied his motion for continuance on the grounds the State had gone to great expense to bring witnesses to testify and therefore petitioner would have to stand trial that day.

Petitioner explained to the Court that he was not capable of representing himself, that he was only 20 years of age and was uneducated and had never heard a court trial except the one time he was tried on the same charge, and then he was represented by Mr. Carr, and that he did not know court procedure or how to conduct his defense, and told the court he had been closely confined in solitary at the Florida State Prison at Raiford, up until the night before, and therefore he had no opportunity to employ new counsel, since the Court had permitted his chosen counsel to abandon him in the face of trial, and it was an absolute necessity that the court grant a continuance, or, in the alternative, for the court to remedy the situation by appointing counsel to represent the petitioner.

The request for continuance and counsel was refused, and thereupon the court ordered the trial to proceed immediately without any defense counsel.

Petitioner was found guilty by jury and Judge Patton, sentenced petitioner to 15 years in Prison. Petitioner's codefendant, Lawrence Allen entered a plea of guilty and testified for the State.

It should be noted that all of the evidence introduced by the State was taken from the car and house trailer of the co-defendant Allen. Allen was arrested in California by the F.B.I. and he was driving a new Cadillac and was living in a new $8,000 dollar house trailer, and when arrested he had $24,000 dollars cash on him and thousands of dollars worth of jewels. Allen is a well known hijacker and safe cracker with a long police record, and an ex-convict. He is also several years older that the petitioner. Petitioner was arrested in Georgia and

had no money, and there was nothing that would connect Allen and the petitioner except Allen's word. Mr. Duncan did not order the hardened criminal Allen taken to the Florida State Prison and locked up in solitary confinement, instead he was given the run of the County Jail and a sentence of 10 years probation was imposed on Allen by Judge Patton, and the petitioner who was a first offender was sentenced to 15 years in the State Prison.

Thus ends the history of the case.

Argument and Question # 1

Under the Due Process Clause of the 14th Amendment to the Constitution of the United States, a Defendant in a State Prosecution Has Been Held to be Entitled to Retain Counsel as a Matter of Right. Is that Right Abused When His Chosen Counsel Withdraws From the Case at the Commencement of His Trial, and He is Immediately Thereafter Put to Trial Over His Objections and Without Counsel? Is that Right Abused by the Refusal of the Trial Court to Grant Continuance When Request for Same is Based Upon Defendant's Need for Additional Time Within Which to Employ New Counsel?

This question does not involve the question of court-appointed counsel. It involves primarily, the right of a defendant in the State of Florida, under both his federal and State constitutional rights to Due Process, to retain and employ counsel and to be represented by counsel of his own choice. The petitioner contends that after his plea of not guilty, after his counsel abandoned him, the trial courts refusal to grant him a continuance for the purpose of enabling him to seek new counsel, operated to deprive him of his constitutional right to representation by counsel, and also operated to deprive him of a fair and impartial trial.

Petitioner's right to so avail himself is the meat of the case here. That right was abridged and abused by the refusal of the trial court to allow continuance so that

petitioner could arm himself with the most important of all judicial weapons, a professional scholar of the law to plead his cause, and to establish his innocence.

Petitioner relies on an opinion handed down by the Florida Supreme Court in the case of *Wood* v. *State of Florida,* 19 So. 2nd, pages 872-876, wherein the following rule was enunciated:

> "We are committed to the Doctrine that regardless of the heinousness of the crime one may be charged with, he is entitled to a fair and impartial trial . . . and . . . a fair and impartial trial contemplates *counsel,* compulsory attendance of witnesses, and *time in which to prepare for trial* . . . and . . . steps short of these several requirements defeat the spirit of the law . . . ." (See also words and phrases, permanent edition, for other definitions of fair trial; also, *Christie* v. *State,* 94 Fla., 469; 114 So. 450)

Petitioner relies on decisions of the United States Supreme Court which specifically apply and control the instant situation. The following language is quoted from *Betts* v. *Brady,* 316 U.S. 463; 62 Sup. Ct. 1257; and also *Powell* v. *Alabama,* 287 U.S. 45; 53 Sup. Ct. 55-65; 77 L. Ed. 158; 84 A.L.R. 527;

> "In the fundamental law of most states, the language used indicates only that a defendant is *not to be denied the privilege of representation by counsel of his choice.*" (*Betts* v. *Brady, supra*)
>
> "The failure of the trial court to afford the defendants *reasonable time and opportunity to secure counsel was* a clear denial of due process." (*Betts-Brady,* supra)
>
> "It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice." (*Powell* v. *Alabama,* supra)

The Florida Supreme Court in the case of *House* v. *State,* 130 Fla. 400; 177 So. 705; made the observation that:

". . . when construing the constitution of the United States, it is the duty of this court to follow the Constitution placed thereon by the Supreme Court of the United States . . ."

In the *Powell* v. *Alabama* case, supra, the United States Supreme Court detailed at length the question here involved:

"What, then, does a hearing include? Historically and in practice in our own country at least, *it has always included the right to the aid of counsel when desired and provided by the party asserting the right.* The right to be heard would be, in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, *and convicted upon incompetent evidence, or evidence irrelevant to the issues or* 6 *otherwise* inadmissable. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. It in any case Civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

Further on in the same opinion, the U.S. Supreme Court continues:

"In ex parte Riggins (C.C.) 134 Fed. 404, 418, a case involving the Due Process clause of the 14th Amendment, the court said, by way of illustration, that if the state should deprive a person of the benefit

of counsel, it would not be due process of law. Judge Cooley refers to the right of a person accused of crime to have counsel as perhaps his most important privilege, and after discussing the development of the English Law on that subject, says: "With us it is a universal principle of constitutional law, that the prisoner shall be allowed a defense by counsel." (I Cooley, Const. Lim. 8th Ed. 7 C.) The same author, as appears from a chapter which he added to his edition of Story on the Constitution, regarded the right of the accused to the presence, advice and assistance of counsel as fundamental in character. *E. G. People* v. *Napthaly,* 105 Cal. 641, 644, 39 Pac. 29; *Cutts* v. *State of Florida,* 54 Fla. 21, 23, 45 So. 491; *Martin* v. *State,* 51 Ga. 567, 568, 1 Am. Crim. Rep. 536; *Sheppard* v. *State,* 165 Ga. 460, 464, 141 S.E. 196; *State* v. *Moore,* 61 Kan. 732, 734, 60 Pac. 748; *State* v. *Ferris,* 16 La. Ann. 424.

In *Messer* v. *State,* 120 Fla. 95; 162 So. 146, the Florida Supreme Court said:

> "The constitutional right of an accused to be 'heard' by counsel is stated in language of emphasis that means just what it says. *It should be respected in substance as well as in form by the trial courts.* The United States Supreme Court in *Powell* v. *State of Alabama* (supra) has gone so far as to hold that the constitutional right to be heard by counsel is an indispensable part of due process of law itself as required by federal law under the 14th amendment. The right to be heard by counsel being a constitutional one, it follows that no intentional, nor unintentional, frittering away of the constitutional privilege in this regard should be tolerated . . ."

Some further consideration of this right is found in the case of *House* v. *State,* 130 Fla. 400, 177 So. 705, wherein the Florida Supreme Court said:

> "The Supreme Court of the United States has held that *the right of one charged with crime to be represented by counsel includes a fair opportunity to secure counsel of his own choice, and that he is as much entitled to the assistance of counsel in prepar-*

ing his trial as at the trial itself and that a denial of these rights is contrary to the due process clause of the 14th amendment to the Federal Constitution."

Insofar as the instant case of Petitioner Cash is concerned, the practical and mandatory application of these rules is found to squarely fit the circumstances about which he complains, if only by virtue of the following federal rule as to this State (Fla.) as found in the decision of *House* v. *Mayo,* 63 Fed. Supp. 169:

> "In Florida it is held that the right of the accused in all criminal cases to be heard by himself, or counsel or both, as guaranteed by Section 11 of the Declaration of Rights of the Florida Constitution, is more than a mere right of the accused. It is a mandatory organic rule of procedure in all criminal prosecutions, and a requisite of a fair and impartial trial in that state. *Deeb* v. *State,* 131 Fla. 362, 179 So. 894; *Christie* v. *State,* 94 Fla. 469, 114 So. 450. This being the nature of the right conferred by the Florida Constitution, denial of such an organic right constituted a denial of due process guaranteed by the Fourteenth Amendment which may be redressed, in appropriate circumstances in a federal court by habeas corpus. *Ex parte Hawk,* 321 U.S. 114, 64 Sup. Ct. 448, 88 L. Ed. 572, Cf. *Williams* v. *Kaiser,* 323 U.S. 471, 65 Sup. Ct. 363, 89 L. Ed.; *Tomkins* v. *Missouri,* 323 U.S. 485, 65 Sup. Ct. 370; *House v. State,* 130 Fla. 400, 177 So. 705."

The Federal and State decisions are abundant with instances wherein it is consistently held that one, in the circumstances of petitioner's situation, was entitled to counsel as a matter of right and was entitled to reasonable time within which to avail himself of that right when his chosen counsel elected to abandon him in the face of trial. Judicial precedents which support the view of petitioner could be cited ad infinitum. It seems futile and unnecessary to burden this court further with citations of the rule so firmly established in the Federal Courts and the Florida Courts. In a long line of cases here cited, the United States Supreme Court held that:

8 "It is a denial of the accused's right under the due process clause of the 14th Federal Constitutional amendment to *force him to trial with such expedition as to deprive him of the effective aid and assistance* of counsel."

See *Williams* v. *Kaiser*, supra.
Tomkins v. *Missouri*, supra.
Rice v. *Olson*, supra.
Betts v. *Brady*, supra.
Powell v. *Aalabama*, supra.
Ex Parte Hawk, supra.
House v. *Mayo*, supra
Avery v. *Alabama*, 308 U.S. 444, 84 L. Ed. 377, 60 Sup. Ct. 321.

Petitioner's application for continuance became a virtual legal necessity for the following four reasons:

1. Due Process of law required it and Florida Statute (909.20) required it to enable preparation of defense *after the entry of not guilty plea.*
2. Due Process required it and Florida Statute (916.03) required it because the ground for such request (abandonment by counsel). *arose after the cause was set for trial.* The universally accepted standards of fairness and right dictate that continuance should be granted to any defendant wherever abandoned by his counsel.
3. Due Process required it and the Florida Bill of Rights required it because therein are found respectively the federal and state rights to be represented by counsel. The Florida Bill of Rights entitles a defendant in a state court criminal prosecution to representation by himself *by counsel,* or by both.
4. The Due Process clause of the 14th amendment to the U.S. Constitution required it, because all the court's of last resort and the United States Supreme court have consistently agreed that in all state court prosecutions a defendant is legally entitled to avail himself of his right to representation by counsel of his choice.

Cash's counsel abandoned him in the face of trial, leaving him naked, unprotected, unprepared, and "undefended". Petitioner contends that such abandonment was grounds for continuance and that such grounds arose after the case was set for trial. His predicament fits to perfection the pattern of circumstances contemplated by the Florida law, Section 916.03.

Failure of the trial court to invoke the State Statute in these circumstances was a failure to invoke due process. Fairness and Right demanded that a continuance be granted in these circumstances.

It hardly seems necessary to burden this court with further argument on this question.

9 Under the Due Process clause of the 14th amendment to the Constitution of the United States, and the opinions handed down by the United States Supreme Court, and the opinions handed down by the Florida Supreme Court, is a defendant entitled to court appointed counsel when it is shown the defendant is unable to employ counsel, and is incapable of representing himself adequately at the trial on account of age, inexperience and ignorance of court procedure and lack of mental capacity to prepare and present his defense to establish his innocence?

Petitioner shows in the history of this case that he did not know his chosen counsel had withdrawn as his attorney until Feb. 17, 1955, and petitioner was closely confined in solitary at the Florida State Prison at Raiford, Florida, therefore, it was impossible for petitioner to make arrangements for new counsel while so confined. There are a lot of questions that should be answered in this case, as to why the petitioner was sent to the State Prison for safe keeping when he had never escaped in his life from any one, and the co-defendant with a long police record was confined in the county jail, and why did Mr. Henry Carr, withdraw from the case? and why did Judge Patton refuse to grant continuance or appoint counsel? and why did the Hon. Ted Duncan fail to file charges against John Fulford and Fred Cash, in this case when Lawrence Allen,

the big time gangster named them as being with him when he robbed the store.

Every one who knows anything about what was known as the "Cash" gang, knows that Ray Cash, was not a member of that gang and that his older brother Virgil and Fred Cash would never let their baby brother hang around with them much less take part in their criminal activities. This gang was known as big time operators as the testimony of one of its old members, Lawrence Allen shows he and the other members pulled a $180,000 robbery in New Orleans, and the petitioner, Ray Cash, was not there.

The record will show Mr. Henry Carr had represented the States star witness and big time gangster six times in Miami alone for hi-jacking and succeeded in gaining his release. In this case Mr. Carr was representing the petitioner for a very small fee. Could Mr. Carr have entered a pact with his former wealthy client, Allen, and the States Attorney Mr. Duncan to withdraw from petitioner's case at the last moment, therefore rendering the petitioner helpless at the trial and setting the stage whereby Mr. Duncan could shift the evidence from in possession of the witness Allen, to this ignorant backwoods country youth. It should be noted that all the evidence was in possession of the witness Allen, therefore, it was an open and shut case against him and he had to pull some strings or go to prison.

The question is did this theory materialize?

The facts in the case say yes, Mr. Carr withdrew as Attorney for the petitioner just before trial leaving the petitioner helpless and alone, the court would not grant continuance, and would not appoint counsel. Next we find the Honorable Ted Duncan performing a duel role of defending the big time gangster Lawrence Allen, and taking the evidence from in possession of Allen, and putting it in possession of the youth Ray Cash. Mr. Duncan realized he could not do this if the petitioner was defended by counsel as he had failed to convict the petitioner before when he was represented by counsel.

Next we find the trial under way with the Veteran States Attorney, Honorable Ted Duncan, and his able assistant, Hon. Joe Hill Williams, prosecuting for the state, and we find a 20 year old farm boy trying to defend himself. Even under this setting without interference from the defense, Mr. Duncan was having trouble accomplishing his dual role.

Petitioner quotes from the Gainesville Sun.

> "State Attorney Ted Duncan today began the laborous process of corroborating testimony that Ray Cash participated in a burglary here last year."
> "Yesterday, Lawrence Allen, a friend of Cash's for over four years took the stand for an hour and a half and related how he and Cash in company of two others, burglarized stores, stole a truck and became engaged in a running gun battle with police. Duncan said today he would call most of the State witnesses to corroborate Allen's account of the crime."
> "Cash, unable to obtain counsel for lack of time and
11 money, is conducting his own defense. No provision is made under Florida law for an appointed defense attorney except in capital cases."
> "Cash is expected to run into some tough legal knots during the course of the trial, as over 20 items of evidence linking him to the burglary were placed into evidence during the last trial."

From the newspaper report of the trial it is obvious the petitioner Ray Cash was incapable of conducting his defense, and was unfamiliar with the rules of evidence. And it was a burden on the court in the circumstances of this case to protect the petitioner's constitutional rights by appointing counsel to see that justice was done.

This Honorable Court in *Sneed* v. *Mayo*, 66 SO. 2d, 865, said:

> . . . "Not because the evidence adduced at the trial on the criminal charge was insufficient to establish guilt, but because, under the Federal decisions, the judgment of conviction is void for failure of the trial court to afford to the defendant the safeguards guaranteed under the Federal Constitution. *Betts* v.

Brady and *Wade* v. *Mayo*, supra; *Ureges* v. *Com. of Penn.*, 335 U. 5 437.69 S. Ct. 184, 93 L. Ed. 127 . . . ."

In *Sneed* v. *Mayo*, the petitioner Sneed was 21 years old. In this case the petitioner Cash was 20 years old. It was shown Sneed was uneducated and unfamiliar with legal matters or procedure and was incapable of representing himself. In the case at bar it will be seen by the record, the petitioner Cash, is uneducated and unfamiliar with legal matters or procedures and was incapable of representing himself adequately.

We find the predicament of Sneed and petitioner Cash, to be identical insofar as the need of counsel to represent them. The same conclusions must be reached in the case at bar as in the *Sneed* case, and this Honorable Court said in the *Sneed* case:

> "From the above cited cases, and the State and Federal decisions and Statutes cited therein, certain principles seem clearly established."
>
> "The court has no right to deprive the accused of the benefit of counsel in a criminal proceeding."

This Honorable Court has cited *Wade* v. *Mayo*, 334 U.S. 672, 68 S. Ct. 1270, 1275, 92 L. Ed. 1647, on
12 numerous occasions it was shown in the *Wade* case, he was a youth of 18 years of age and the trial court would not appoint counsel to represent him and that was the only question in the *Wade* case, and the United States Supreme Court ruled the trial court violated due process of law and the constitutional rights of Wade in refusing to appoint counsel.

The facts in *Wade* v. *Mayo* in regards to counsel are identical twins. The practical and mandatory application of the rules handed down by the United States Supreme Court in that case must be applied in the instant case of petitioner Cash.

In *Sneed* v. *Mayo*, this Honorable Court said:

> "It has been the general practice in trial courts in this State, when a person charged with felony has

been brought to the bar for arraignment, to inquire of the accused whether he had counsel to represent him, and if, upon inquery, it developed that he had no attorney and was unable to employ one, to ask the accused if he desired one to represent him. If he signified his desire to be represented by counsel, that it has been the practice for the trial judge to appoint some attorney to represent the accused. This practice is in accord with the letter and spirit of the Bill of Rights, and section 3969 of the General Statutes of 1906—now section 909.21 Florida Statutes 1951 F.S.A. . . . While the practice in this State has been as indicated above, still there is no law requiring it *Unless the accused is incapable of representing himself adequately at the trial on account of age,* ignorance or lack of mental capacity."

In this same opinion the Florida Supreme Court says: Compare *Betts* v. *Brady,* 316 U.S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595, and also *Wade* v. *Mayo,* those two opinions by the United States Supreme Court says the judgment in the case at bar can not stand because of the age of petitioner and his inability to adequately represent himself as shown by the record.

Petitioner quotes from the Gainesville Sun:

"Duncan then introduced a .38 revolver into evidence as being the one missing from Linzmayer's store."
"Cash objected to introduction of the weapon and the box in which it was kept, but was unable to state a valid ground for the objection."

It should be noted the gun that was introduced as evidence against the petitioner Cash, was the gun the F.B.I. Officer D. E. Raney taken off of the big time gangster, and the States star witness, Lawrence Allen, in the State of California.

13 Therefore the gun had no place in the trial of the petitioner Cash, but Cash lacked the knowledge of how to show it was inadmissable.

Still quoting from the Gainesville Sun:

"While making objections and inquiring of the Judge and witnesses, Cash appeared unsure of himself. On

several occasions he would start a sentence, then stop to rephrase it or start on another subject. Before making objections Cash raised his hand to attract the attention of the Judge, then in a halting manner would make his statement."

Under these circumstances can this Honorable Court hold that this youth was capable of defending himself. In *Powell* v. *Alabama,* supra, the United States Supreme Court must have had in mind such a case as the petitioner's. As that opinion covers the facts in this case. And it will be found in *Betts* v. *Brady* the Supreme Court of the United States quoted in that opinion.

. . . "Would it not be a little like mockery to secure to a pauper these solemn constitutional guarantees for a fair and full trial of the matters with which he was charged, and yet say to him when on trial that he must employ his own counsel, who could alone render these guarantees of any real permanent value to him. Why this great solicitude to secure him a fair trial if he cannot have the benefit of counsel?

. . . "Denial to the poor of the request for counsel in proceedings based on charges of serious crime has long been regarded as shocking to the Universal sense of justice" Throughout this country . . . for example, the Supreme Court of Indiana said: It is not to be thought of, in a civilized community, for a moment that any citizen put in jeopardy of life or liberty should be debarred of counsel because he was too poor to employ such aid. No court could be respected, or respect itself to sit and hear such a trial. The defence of the poor, in such cases, is a duty resting somewhere which will be a once conceeded as assential to the accused to the court, and to the public. *Webb* v. *Baird,* 6 Ind. 13, 18, and most of the states have shown their agreement by constitutional provisions, statutes or established practice judicially approved which assure that no man shall be deprived of counsel merely because of his poverty. Any other practice seems to me to defeat the promise of our democratic society to provide equal justice under the law."

The above view taken by the United States Supreme Court, and also in *Wade* v. *Mayo*, says such a trial as the petitioner had is as no trial.

14 Because the Florida Supreme Court has consistently held the trial courts of Florida must appoint counsel for indigent defendants, when requested and it is shown the defendant is not capable of representing himself, and has consistently held the trial court must inquire if the accused is represented by counsel, if not it has been the practice to appoint some attorney to represent the accused. See:

Hack v. *State*, 141 Wisc. 346, quoted by Justice Buford, J., in *Zellers* v. *State*, 189 So. 236, 138 Fla. 158, 1939.

What is the meaning of the equal protection clause? It may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, so that all persons similarly circumstanced shall be treated alike.

How do the courts consider the due process of law provision? A statute which undertakes to deprive a person of his liberty without notice and opportunity to be heard by counsel certainly is invalid. The courts have held that the due process of law provision is the most important guaranty of personal rights to be found in the Federal or State constitutions. It is a limitation upon arbitrary power, and is a guaranty against arbitrary legislation. No citizen shall arbitrary be deprived of his life, liberty or property. This the legislation cannot do nor authorize to be done. The United States Supreme Court has repeatedly declared that due process guaranteed by the Federal constitution requires a trial in a State Court, conforming to the fundamental concepts of justice which lie at the base of our civil and political institutions, and that if the state supplies no corrective process the Federal Courts will intervene to protect the life or liberty of the citizen from a judgment where the trial is not conducted according to such standard.

It will be seen by the authoritys cited in this petition, that it is the practice in Florida to appoint counsel to indigent defendants. Did the petitioner in this cause receive the same equal protection of the law as other defendants has received in the Florida Courts under the same circumstances?

15 Can it be said that the petitioner received a *Fair* and *Impartial* trial as required under both Federal and State constitutions, and the trial was conducted according to standards laid down by those constitutions?

When the light is thrown on the true facts of this case, it brings out questions that require and demand answers. Such as the sentences imposed by Judge Patton, he sentenced the petitioner a youth of 20 years of age and a first offender to 15 years in the Florida State Prison at hard labor, and he sentenced the co-defendant a big shot and wealthy big time gangster, and also an ex-convict to 10 years to be probated. Now if these sentences were reversed it would sound right, and would be appropriate. There can be only two answers as to why such sentences was imposed there had to be a pay off to Judge Patton, or to some one who had influence over Judge Patton, or Judge Patton put a penalty on the petitioner for exercising his constitutional rights and demanding a jury trial.

The states witness Allen, the big time gangster, testified at the trial that he "Allen" had staged a $180,000 dollar robbery a short time before his arrest. The question is what influence did this money have on the outcome of this trial "If it could be called a trial," and the sentence imposed.

The United States Supreme Court said in *Griffin* v. *Illinois* in Certiorari No. 95, Oct. Term 1955, April 23, 1956.

> . . . "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. . . ."

Petitioner quotes from the Gainesville Sun.

> "Allen testified that Cash was with him, Fred Cash, and John Fulford the night of April 3, and that all

four took part in the theft . . . Allen said Fulford was driving his 1950 Oldsmobile. Fred Cash was with him, Ray Cash was with me in my 1952 Dodge."

Here is another odd question in this case Mr. Duncan did not even file charges against these big shots John Fulford and Fred Cash, why? was it because he knew they would come to trial with competent attorneys and he would not have a chance to convict as there was no evidence except what had been manufactured against Ray Cash, so Mr. Duncan could make it look legal and justifiable in releasing the wealthy gangster Lawrence Allen? or did these big shots Fred Cash and John Fulford pay off to keep from being charged with this crime?

It has been shown the petitioner was placed in solitary confinement and held there until the night before his trial. Why? Justice Black writing for the Supreme Court of the United States in *Chambers* v. *Florida*, 309 U.S. 227, said:

> "From the popular hated and abhorrence of illegal confinement, torture and extortion of confessions of violations of the "law of the land" evolved the fundamental idea that no mans life, liberty or property be forfeited as criminal punishment for violation of that law until there had been a charge fairly made and fairly tried in a public tribunal free from prejudice, passion, excitement and tyrannical power . . . wrote into its basic law the requirement, among others, that the forfeiture of lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed . . . the rack, the thumb screw, the wheel, solitary confinement . . . and other ingenious forms of entrapment of the helpless or unpopular . . . and they who have suffered most from secret and dictatorial proceedings have almost always been the poor, the ignorant, the numerically weak, the friendless and the powerless."

It has become well settled throughout all jurisdictions of this country: in all our state courts of last resort: and in the United States Supreme Court, that convictions for

alleged criminal offenses, when they have been arrived at via detours from the legitimate highway of constitutional construction; when their foundation is laid in judicial procedures which lacked the essential rudiments of American Justice—Fairness and Right; they are without the validity necessary to lawful enforcement; they are convictions found in violation of Due Process of Law and as such are contrary to and in violation of the 14th amendment to the United States constitution. Such convictions have been universally held to be not merely voidable, but are V O I D from the inception.

The authoritys cited under question one are applicable also to question No. Two, and from the authoritys cited and the facts in this case warrants the serious consideration of this Honorable Court.

Wherefore, petitioner respectfully prays unto this Honorable Court that the gracious States writ of Habeas Corpus issue forthwith according to law, directed to the respondent named in this cause, to the end, that the matters herein complained about be inquired into and that relief appropriate to the circumstances be granted that pursuant thereto, petitioner be discharged from unlawful custody.

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Petitioner shall ever so pray

/s/ Ray Cash
Ray Cash
Petitioner

COUNTY OF UNION
STATE OF FLORIDA

Subscribed and sworn to before me this 25th day of November, 1957.

/s/ LAWRENCE E. DUGGER
Notary Public

Notary Public, State of Florida at large.

My commission expires Sept. 19, 1958.

Bonded by American Surety Co. of N. Y.

Duly sworn to by Ray Cash
jurat omitted in printing

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18 IN THE SUPREME COURT OF FLORIDA

RAY CASH, *Petitioner*

VS.

R. O. CULVER, as State Prison Custodian, *Respondent.*

Order Denying Petition for Writ of Habeas Corpus
Dec. 10, 1957

The above named petitioner has filed a petition for Writ of Habeas Corpus, and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

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19 Clerk's Certificate to foregoing transcript omitted in printing

No. 474 Misc., October Term, 1957

RAY CASH, *Petitioner,*

vs.

R. O. CULVER, State Prison Custodian

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of Florida.

Order granting Motion for Leave to Proceed in Forma Pauperis and Granting Petition for Writ of Certiorari—June 9, 1958

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 1057.

June 9, 1958.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 91

RAY CASH,

Petitioner,

vs.

R. O. CULVER, State Prison Custodian,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE PETITIONER

Opinions Below

The Supreme Court of Florida did not file an opinion. Its "Order Denying Petition for Writ of Habeas Corpus" (R. 21) is not reported.

Jurisdiction

The jurisdiction of this Court rests on 28 U.S.C. §1257(3), in that the petition denied by the order below (R. 21) alleged imprisonment in violation of the Fourteenth Amendment through deprivation of the right to counsel (R. 1).

Constitutional and Statutory Provisions Involved

The due process clause of the Fourteenth Amendment, together with the several provisions of Florida law touched on in our Argument, are set out in the Appendix.